

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Donald Ray Clifford,

Debtor.

Case No.: 04-33909

Chapter 13 Case

NOTICE OF HEARING AND MOTION OBJECTING TO EXEMPT PROPERTY

TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTOR, HIS ATTORNEY AND OTHER
PARTIES IN INTEREST:

1. Michael J. Farrell, Chapter 13 Trustee of the bankruptcy estate of the above-named Debtor by and through his undersigned attorney, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at October 20, 2004 at 2:00 P.M. in Courtroom No. 228A, at the United States Court House, 316 N Robert St., St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than 2:00 P.M. on October 15, 2004, which is three days before the time set for the hearing, (excluding intermediate Saturdays, Sundays, and legal holidays), or filed and served by mail not later than October 12, 2004, which is seven business days before the time set for the hearing (excluding intermediate Saturdays, Sundays, and legal holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rules 4003, 5005, 9013 and 9014, Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on July 6, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §522 and Bankruptcy Rule 4003 and Local Rule 702. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. Movant requests relief with respect to Debtor's claim for exemption.

6. Debtor has attempted to exclude his pension from property of the estate and has claimed as exempt the following asset which the trustee objects to as follows:

- (a) Objection is made to the Debtor's attempt to exclude the pension from the bankruptcy estate and his attempt to claim the pension, with a value of \$150,000.00, exempt under 11 U.S.C. §541(c)(2).

7. Based on documentation provided to the Trustee, the debtor has an Evangelical Lutheran Church of America (ELCA) Pension. Page 38 of the Summary Plan description indicates it is a "church plan." Attached hereto as Exhibit "A" is a true and correct copy of the summary plan. The trustee does not believe that the above-described plan is ERISA qualified or otherwise eligible to be exempt or excluded from the bankruptcy estate under the cited provision of the bankruptcy code. See In re: Linda D. Roesler, BKY 03-60504, decision of Dennis D. O'Brien, (August 26, 2003).

8. The debtor is currently 58 years old. The non-filing spouse is currently 62 years old. The debtor is currently employed at ELCU Lutheran Church in Hanley Falls, MN as an Interim Pastor and has been so employed for 20 years. The non-filing spouse is currently employed at The Dollar Stop and has been so employed for two years.

WHEREFORE, the Trustee moves the court for an order sustaining Trustee's objection to claimed exempt property and such other relief as may be just and equitable.

Dated this 13th day of September 2004.

ULVIN AND SULLIVAN ATTORNEYS, P.A.

/s/ Patti J. Sullivan

Patti J. Sullivan, Attorney for Trustee
Attorney ID No. 170124
P.O. Box 16406
St. Paul, MN 55116
(651) 699-4825

UNITED STATES BANKRUPTCY COURT
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In re:

Case No.: 04-33909

Donald Ray Clifford,

Chapter 13 Case

Debtor.

VERIFICATION

I, Michael J. Farrell, Chapter 13 Trustee, the Movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

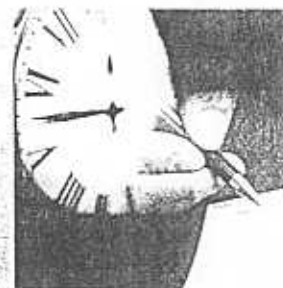
Executed: 9-13-04



Michael J. Farrell, Chapter 13 Trustee

SUMMARY PLAN DESCRIPTION

Effective Jan. 1, 2004



EXHIBIT

"A"



Board of Pensions
Presbyterian Church in America

Table of contents

About this booklet	➤	1
Eligibility and enrollment	➤	2
Contributions to your retirement account	➤	4
Your investment options	➤	10
Distributions from your account	➤	13
Receiving a lifetime monthly annuity income	➤	19
Survivor benefits	➤	23
Your beneficiary designation	➤	25
Tax information	➤	28
Divorce	➤	30
Appeals procedure	➤	32
Miscellaneous provisions	➤	34
Administrative information	➤	37
Fiduciary standards	➤	38
Glossary	➤	40
Index	➤	43

About this booklet

As a unit of the Evangelical Lutheran Church in America (ELCA), the Board of Pensions' mission is to enhance the lives of pastors, rostered laypersons, lay employees and their families, and support the well-being of the ELCA congregations and institutions affiliated with the ELCA. To serve those who serve, the ELCA Board of Pensions administers the ELCA Pension and Other Benefits Program, which includes the ELCA Retirement Plan.

ELCA Retirement Plan

The ELCA Retirement Plan is designed to help you achieve financial security in retirement. As a defined contribution plan under Internal Revenue Code §403(b)(9), all contributions are pretax.

When you enroll in the Pension and Other Benefits Program, you and your employer can make pretax contributions to the Retirement Plan. You decide how your account is invested by choosing from the available 20 ELCA investment funds. The plan offers considerable flexibility. You have limited in-service withdrawal options, and additional withdrawal and rollover options when you separate from ELCA service or retire, based on plan limits.

As you near retirement, you can receive limited distributions from your account in the form of withdrawals or rollovers. At retirement, you may choose to convert all or a portion of your account to a lifetime annuity income, and/or leave your account actively invested in one or more of the plan's 20 funds.

This booklet is a summary

This booklet is a summary of your benefits under the ELCA Retirement Plan, effective Jan. 1, 2004. Use it as a reference tool and the first place to look when you have questions about your retirement account and benefits.

Additional summary booklets

Separate summary plan descriptions are also available for the

- ELCA Health Benefits Plan
- ELCA Disability Benefits Plan
- ELCA Survivor Benefits Plan

Plan document

While this booklet summarizes the benefits under the ELCA Retirement Plan, it cannot address every conceivable set of circumstances that arise in the lives of plan members.

In all cases, your rights under the plan are governed by the plan document (i.e., the full, legal description of the plan). If this summary is found to be inconsistent with the plan document, the plan document will be considered the controlling document.

A copy of the plan document may be obtained from the Board of Pensions Service Center upon request.

BOARD OF PENSIONS

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Office hours

7:30 a.m. – 5 p.m. (Central)

Monday – Friday

Contact us with questions about enrollment, contribution rates, address changes, life events, changes in coverage and retirement benefits.

Eligibility and enrollment

When you enroll in the Pension and Other Benefits Program

When an eligible employer sponsors you in the program, you are enrolled in the following ELCA plans:

- Health Benefits Plan
(unless you waive coverage)
- Retirement Plan
- Disability Benefits Plan
- Survivor Benefits Plan

A single plan

The ELCA Regular Pension Plan and Optional Pension Plan were combined into a single plan called the ELCA Retirement Plan as of Jan. 1, 2003.

MELLON

(800) 352-2876

www.elcabop.org

Office hours

8:30 a.m. – 8 p.m. (Eastern)

Monday – Friday

Contact Mellon with questions about your account balance, investment changes and withdrawals. Online account transactions are available using the interactive voice response system or via the Internet.

Eligible ELCA employers

ELCA congregations, churchwide units and other organizations affiliated with the ELCA may sponsor their eligible employees in the Pension and Other Benefits Program.

- ELCA synods, seminaries and other churchwide units (except for the ELCA Publishing House — Augsburg Fortress, Publishers) must sponsor all of their eligible employees. However, they are not required to sponsor temporary employees or non-ELCA pastors.
- ELCA congregations may sponsor any or all of their pastors, rostered laypersons and other employees who are eligible employees.
- ELCA institutions not subject to the coverage requirements of the Tax Reform Act of 1986 may sponsor any or all of their eligible employees. Institutions that wish to only provide a retirement benefit may participate in the ELCA Master Institutional Retirement Plan, but then must sponsor all eligible employees (excluding those sponsored in the Pension and Other Benefits Program). These institutions generally include elementary and secondary schools, day care centers, camps and conference centers.
- ELCA institutions subject to the coverage requirements of the Tax Reform Act of 1986 may sponsor any or all of their eligible ELCA pastors. They may also sponsor rostered laypersons and other employees but then must enroll all those eligible. Institutions that wish to only provide a retirement benefit may participate in the ELCA Master Institutional Retirement Plan, but then must sponsor all eligible employees (excluding those sponsored in the Pension and Other Benefits Program). These institutions generally include social ministry organizations, colleges and universities, nursing homes and hospitals.

Eligible non-ELCA employers

Certain non-ELCA employers may sponsor ELCA pastors and rostered laypersons in the Pension and Other Benefits Program.

- Non-ELCA tax-exempt organizations (referred to as 501(c)(3) organizations) may sponsor any or all ELCA pastors serving under call to a non-ELCA ministry. They may also sponsor ELCA rostered laypersons serving under call but then must enroll all those eligible. These organizations include social ministry organizations, ecumenical agencies and partner congregations, non-ecumenical congregations and pastoral care settings.

- Non-ELCA taxable organizations (referred to as non-501(c)(3) organizations) may sponsor any or all ELCA pastors serving under call to a non-ELCA ministry. These organizations include government agencies and for-profit organizations.

Eligible pastor or rostered layperson

If you are serving under call, you are eligible to enroll in the Pension and Other Benefits Program if you are employed by an eligible employer and are scheduled to work at least 15 hours per week for six or more months per year.

Eligible lay employee

You are eligible to enroll in the Pension and Other Benefits Program if you are employed by an eligible employer and are scheduled to work at least 20 hours per week for six or more months per year.

Eligible retired member

You are eligible to make salary-reduction contributions to the Retirement Plan if you are retired and employed by an eligible employer or serving under call to a non-ELCA employer, even if you are not sponsored in the Pension and Other Benefits Program.

Eligible chaplain

You are eligible to make salary-reduction contributions to the Retirement Plan if you are an eligible chaplain under the ELCA Supplemental Retirement Plan for Government Chaplains.

Self-sponsoring ELCA pastor

If you are called to a non-ELCA ministry and your employer chooses not to sponsor you in the Pension and Other Benefits Program, you may sponsor yourself in the program. If you are called to a ministry in which you are considered self-employed in accordance with Internal Revenue Code §414(c)(5)(A)(i), you may also sponsor yourself in the program.

Steps to take

To enroll in the program

- 1** Contact the Service Center at the Board of Pensions and request an enrollment packet for the Pension and Other Benefits Program. Call (800) 352-2876 or e-mail mail@elcabop.org.
- 2** Complete the *Application for membership*.
- 3** Return your completed application to the Board of Pensions in the envelope enclosed in the packet.

Contributions to your retirement account

Retirement calculator

To determine whether you are on track toward meeting your retirement goals, visit www.elcabop.org and use the calculators. The *Annuity options calculator* will determine the amount of money needed to provide the income you want in retirement. The *Savings calculator* will help you determine the amount you need to save to provide that retirement income.

You and your employer can make contributions to the plan. You decide how your account is invested by choosing from the 20 ELCA fund options. As a retirement plan under Internal Revenue Code §403(b)(9), all contributions are pretax (i.e., you pay no income tax until you receive a distribution from your account). The investment earnings are also tax deferred.

Your retirement account

The Retirement Plan offers you the convenience of a single account for

- amounts you personally choose to set aside (i.e., pretax salary-reduction contributions)
- contributions made by your employer on your behalf (i.e., employer contributions)
- if you are a pastor, other amounts set aside by your employer (i.e., housing equity contributions)
- any distributions rolled over from other eligible retirement plans (i.e., rollover contributions)

Your entire account is invested in the ELCA funds according to the choices you make. All contributions and rollovers are immediately vested. These amounts and their investment earnings accumulate during your working years to provide income in retirement.

Defined compensation

Whether you are an ELCA pastor, rostered layperson or lay employee, annual defined compensation includes your base salary, before any pretax benefit contributions are deducted. If you are an ELCA pastor, your annual defined compensation also includes the amount of any Social Security tax allowance paid to you.

If you are an ELCA pastor, defined compensation also includes one of the following:

- if housing is not provided, the amount of any cash housing allowance paid to you
- if housing is provided, an additional 30 percent of your base salary and any Social Security tax allowance, plus any household furnishings or utilities allowance paid to you

Employer contributions

The Retirement Plan is a defined contribution plan under Internal Revenue Code §403(b)(9). This means your sponsoring employer makes a contribution to your retirement account, rather than promising a particular benefit level at retirement. The level of contribution is expressed as a percentage of your defined compensation. (If you are an eligible self-employed pastor, you pay the contributions instead of an employer.)

These pretax contributions are

- credited to your retirement account
- immediately vested
- invested in the ELCA funds according to your investment election for future contributions
- not subject to Social Security taxes or creditable toward Social Security benefits

Defined compensation exclusions

Annual defined compensation does not include:

- the cost of utilities paid to the utility company by your congregation or organization
- employer contributions made to the ELCA Retirement Plan or another retirement plan
- housing equity contributions made to the ELCA Retirement Plan
- expense reimbursements or allowances (such as auto and mileage, continuing education, book or professional expenses)

Pretax benefit contributions

Pretax benefit contributions include salary-reduction contributions to the ELCA Retirement Plan or another qualified retirement plan. They also include pretax contributions to qualified reimbursement accounts for medical, child care or transportation expenses.

Note

Your employer may contribute an additional amount above the minimum contribution, following the guidelines on Page 6.

Contributions to your retirement account

Steps to take

To change a contribution agreement

- 1 Complete a new *Contribution agreement* form. (Forms are available at www.elcabop.org, mail@elcabop.org or by calling (800) 352-2876.)
- 2 Mail the completed and signed agreement form to the Board of Pensions.
- 3 Allow one to two payroll cycles after we receive your request for the change to be effective.
- 4 Use your PIN to access your account at www.elcabop.org.

Contribution agreement

A contribution agreement applies only to amounts earned after the agreement has been signed by you and your employer and received by the Board of Pensions. At any time, by written notification to your employer, you may terminate the entire agreement with respect to amounts not yet earned.

Your employer determines the total percent it will contribute to the Retirement Plan, subject to the following:

- **Employer contributions** — The employer contribution percentage may be different for each sponsored member, but may not be less than 10 percent of your defined compensation. However, if you participated in a predecessor plan on Dec. 31, 1987, where at least age 45 on that date, and have continuously participated in an ELCA retirement plan since Jan. 1, 1988, the total employer contribution must be at least 11 percent.

Note: If you are employed by an ELCA institution or a non-ELCA organization, the employer contribution percentage must be the same for all non-clergy sponsored members and may not be less than 6 percent of defined compensation, as determined by your employer.

- **Housing equity contributions** — If you are an ELCA pastor and employed by an ELCA or ecumenical partner congregation or an ELCA synod, seminary or churchwide unit, your employer may make housing equity contributions on your behalf, subject to contribution limits described on Page 7. Your employer decides the effective date, how often to make contributions and the contribution amount. These contributions are in addition to the employer contribution described above.

Housing equity contributions can be withdrawn at any time. If you are an ELCA pastor (or were a pastor at the time contributions were made to the plan), 100 percent of your withdrawal amount will be designated as housing allowance (see the *Clergy housing allowance* section on Page 29 for additional information).

To begin making housing equity contributions, or to change a contribution amount, download a *Contribution agreement* form from www.elcabop.org, or call (800) 352-2876.

Salary-reduction contributions

You may begin making salary-reduction contributions at any time if you are

- a sponsored member
- a self-sponsoring ELCA pastor
- a retired member employed by an eligible employer
- an eligible chaplain under the ELCA Supplemental Retirement Plan for Government Chaplains

Download a form from www.elcabop.org or call (800) 352-2876. Return the form to the Board of Pensions, allowing a few weeks for processing.

Salary-reduction contributions for sponsored or retired members

When you enter into a salary-reduction agreement with your employer, you agree to reduce your salary by a specified amount. You decide the effective payroll date (e.g., a future date), the timing (i.e., weekly, monthly, etc.) and the percentage of defined compensation or dollar amount of the pretax contribution. Your employer sends the contributions to the Board of Pensions, and they are credited to your retirement account.

To begin making salary-reduction contributions or to change your contributions (increase, decrease or discontinue), complete the *Salary-reduction agreement* section of your enrollment form or on a *Change of call* or *Change of salary* form. (See *Contribution limits* in the sidebar to the right.)

Salary-reduction contributions for self-sponsoring pastors or eligible chaplains

As a self-sponsoring pastor or eligible chaplain, you may enter into a salary-reduction agreement and submit regular pretax contributions to your retirement account. The contributions are paid by you and deducted on your tax return. To begin making salary-reduction contributions, you must complete a *Contribution agreement* form available from the Board of Pensions. Contributions you send to the Board of Pensions are credited to your retirement account.

Contribution limits

You can tax defer up to the annual maximum amount allowed by the Internal Revenue Service, which is \$13,000 for most sponsored members in 2004. If you have completed 15 years of service with an ELCA organization, you may be eligible to make additional contributions. The sum total of your own pretax and employer contributions cannot exceed 100 percent of your total taxable compensation, or \$41,000 if less. Taxable compensation does not include housing allowance if you are a pastor. Contact the Service Center for a calculation of your maximum contribution amount.

Catch-up contributions

Sponsored members over age 50 can contribute an additional \$3,000 as a "catch-up" contribution.

Start or change salary-reduction contributions

Indicate the amount you would like to contribute to your retirement account through salary reduction by completing a *Change of call* or *Change of salary* form or by filing a new *Contribution agreement* form with the Board of Pensions. Forms are available by phone or on our web site.

Contributions to your retirement account

Rollovers

To initiate a rollover into the plan, call the Mellon Service Center at (800) 352-2876 and request a *Rollover contribution* form to complete and return. The rollover amount will be credited to your account and will be invested according to the funds you designate on the form.

Note: A Roth IRA is not a traditional IRA and may not be rolled into your ELCA Retirement Plan account.

If you forget your personal identification number (PIN)

You can request a PIN reminder by contacting Mellon at (800) 352-2876. The reminder will be mailed within two business days to the address we have on record. You cannot access your account or make a transaction without a PIN, so safeguard this information.

Note: When you first access your account, you may change your PIN to something that is easy for you to remember.

Rollover contributions

You may roll over distributions from an IRA or other eligible retirement plan (i.e., a 401(k) plan, another 403(b) plan or a 457(b) governmental plan) to this plan. By consolidating your retirement assets in the ELCA Retirement Plan, you can more easily manage your retirement investments. You can also take advantage of the competitive performance of this plan's 20 investment funds and wide range of plan features (e.g., account access online and via telephone, quarterly statements, commission-free investing, no annual account maintenance fees, etc.).

The other plan must meet the definition of an eligible retirement plan under the Internal Revenue Code and the distribution cannot be

- a required minimum distribution or hardship withdrawal
- part of a series of substantially equal periodic payments paid over 10 or more years, your lifetime or the lifetimes of you and your beneficiary
- less than \$200

Rollover contributions are immediately 100 percent vested. These contributions and their earnings can be withdrawn at any time (subject to applicable tax if withdrawn before age 59½ and not rolled over to another eligible retirement plan). Contact the Mellon Service Center for more information.

Transfer contributions

If you are currently sponsored in the ELCA Retirement Plan, but have accumulations in another ELCA plan (e.g., the Master Institutional Retirement Plan or the ELCA Retirement Plan for The Evangelical Lutheran Good Samaritan Society), you may transfer all your accumulations into this plan. Your salary-reduction contributions will be designated as "TSA transfer contributions," and your employer contributions as "ELCA transfer contributions." Amounts transferred are subject to ELCA Retirement Plan withdrawal limits. Contact the Mellon Service Center to initiate a transfer.

How your account is valued

Your account is valued on a daily basis. Daily unit values for each investment fund are calculated by pricing the asset in each fund and dividing the market value by the total number of units outstanding in that fund. Each time a contribution is invested in a fund, the contribution purchases units based on that day's unit value. Unit values can rise and fall, depending on investment gains and losses in the fund.

If you make a transaction to your account (e.g., fund transfer), the transaction is processed at the close of business that same day, provided you complete your transaction by 4 p.m. Eastern time.

You receive a quarterly statement showing a summary of all transactions and beginning and ending balances for the previous quarter. The statement reports the total value of your retirement account, including market value gains and losses on each fund.

Account statement

Following the end of each calendar quarter, you will receive an account statement reflecting the market value of your account. The following information is shown on the statement for each investment fund:

- the beginning value
- contributions received
- transfers in and out
- withdrawals
- investment earnings (gain or loss) for the quarter
- the ending value

Your investment options

Automated account access

Use your PIN to access your account and make transactions online or by phone 24 hours a day, seven days a week. Transactions include

- changing your PIN
- reallocating your existing accumulations
- changing your investment election for future contributions

All account transactions will be processed at the close of business that day, if received by 4 p.m. Eastern time.

Change your investment election

Your contributions will be invested in the ELCA 60e Balanced Fund when you enroll or re-enroll. You can change your investment decision any time after you receive your personal identification number (PIN) from Mellon.

Investment performance

The most up-to-date investment returns for the plan's investment funds are available on our web site at www.elcabop.org.

You decide how your account is invested by selecting the fund(s) that best meet(s) your personal financial goals. This decision affects how your account will grow throughout your career and the amount of income available to you when you retire. Your investment election applies to future contributions to your account and may be changed at any time. You may also change the allocation of your existing accumulations at any time. As with any important decision, give careful consideration before making investment changes.

Two investment series

Under the ELCA Retirement Plan, funds are grouped into the Select Series and Build-Your-Own Series and are invested in three basic types of investments: stocks, fixed-income and real assets. Each fund is diversified among many securities and comprised of one or a combination of these three basic kinds of investments. You may choose funds from one or both series.

To help you decide the right mix of investments for you, refer to *Your guide to investing in the ELCA Retirement Plan*. For a complete description of each ELCA fund, refer to the *Fund descriptions for the ELCA Retirement Plan*. Copies of these booklets are available on our web site at www.elcabop.org or by contacting the Service Center.

Select Series — This option provides investment choices that are automatically diversified across a mix of equities and other investments. Within the Select Series, there are six balanced funds, three of which are companion social purpose funds. These options offer several key advantages.

- Each fund is diversified within and among the different asset classes and is optimized to generate the greatest expected return per unit of risk.
- As investments change in value, each fund is automatically rebalanced to maintain its targeted proportion of the various asset classes within that fund.
- You can move easily from one Select Series fund to another as your age or time horizon, attitude toward risk and assets change over time.

Build-Your-Own Series — This option includes a grouping of ELCA funds that target a specific type of investment (such as stocks, fixed-income investments or real assets). There are 14 funds in this group, of which five are social purpose funds. The Build-Your-Own Series offers an alternative for you if you like to manage your own investments and have the interest and time to take a more active role in choosing and diversifying your investments and monitoring the fund allocations in your retirement account.

Your investment options

Select Series

ELCA 80e Balanced Fund
 ELCA Social Purpose 80e Balanced Fund
 ELCA 60e Balanced Fund
 ELCA Social Purpose 60e Balanced Fund
 ELCA 40e Balanced Fund
 ELCA Social Purpose 40e Balanced Fund

Build-Your-Own Series

ELCA Global Stock Fund
 ELCA Social Purpose Global Stock Fund
 ELCA Non-U.S. Stock Fund
 ELCA Social Purpose Non-U.S. Stock Fund
 ELCA U.S. Stock Fund
 ELCA Social Purpose U.S. Stock Fund
 ELCA Social Purpose Stock Index Fund
 ELCA S&P 500 Stock Index Fund*
 ELCA Small- and Mid-Cap Stock Index Fund
 ELCA Real Estate Securities Fund
 ELCA High-Yield Bond Fund
 ELCA Bond Fund
 ELCA Social Purpose Bond Fund
 ELCA Money Market Fund

*S&P 500® is a trademark of The McGraw-Hill Companies Inc. and has been licensed for use by the ELCA Board of Pensions. The ELCA S&P 500 Stock Index Fund is not sponsored, endorsed, sold or promoted by Standard & Poor's and Standard & Poor's makes no representation regarding the advisability of investing in the fund.

Social purpose funds

The social purpose funds limit investments in companies that

- produce nuclear, biological or chemical weapons
- deal in harmful products or services like tobacco, distilled alcohol, pornography or gambling
- commit egregious violations of regulatory agencies' guidelines or are major producers of products in certain categories

The funds may include investments that benefit community economic development or the environment.

Your investment options

Consult a financial adviser

You may want to consult with your financial adviser about making an investment decision that will help you reach your financial goals in retirement.

Confidentiality

Your investment decision and account balance are confidential. To access this information, you (or your spouse) must use your PIN and Social Security number on our web site or when using the interactive voice response system. No other individuals may access this information unless you give written consent or as a result of a binding court order.

Participating Annuity Bridge Fund crediting rate

In 2004, the Participating Annuity Bridge Fund will earn a rate of 6.2 percent compounded daily, which produces an annual rate of 6.4 percent. Balances moved into the fund during 2004 will be calculated using a formula that includes the impact of daily compounding of interest. Thus, interest accrued during a partial year will be less than the pro rata portion of 6.4 percent.

Participating Annuity Bridge Fund

The Participating Annuity Bridge Fund is a special balanced fund for investing some or all of your Retirement Plan account before starting a lifetime annuity. Investing in this fund enables eligible members (those age 60 or older, or with 30 or more years of church service) to reduce the possibility of short-term loss, while maintaining investment growth associated with long-term expected returns.

This smoothing effect is accomplished through an interest-crediting formula that considers long-term expected returns of the Participating Annuity Bridge Fund and the actual returns earned by the fund. Therefore, any amount transferred into this fund cannot be withdrawn or transferred back to the Retirement Plan's 20 investment funds. Also, your balance in the Participating Annuity Bridge Fund must be converted to an annuity by April 1 following the year you reach age 70½ (or retire, if later). Contact the Board of Pensions Service Center for more information.

Note: If all your existing accumulations have been transferred to the Participating Annuity Bridge Fund, all future contributions will be credited to this fund, unless you designate otherwise.

Distributions from your account

You can receive distributions from your account by requesting withdrawals, rollovers and/or receiving annuity payments, when you meet certain eligibility criteria.

Note: Withdrawals and rollovers are not permitted from any portion of your account that is invested in the Participating Annuity Bridge Fund.

Requesting a distribution from your account

To request a withdrawal from your retirement account, contact the Mellon Service Center to discuss your options and tax consequences. You will be sent a withdrawal form that must be completed and returned. If you are eligible, your withdrawal must be a minimum of \$250 (or your total account balance, if less).

If you want to receive a portion of your account in a single payment, generally, your withdrawal will be processed within three to five business days after Mellon receives the completed form. The withdrawal amount can be paid to you or rolled over to another eligible retirement plan.

Any amount not directly rolled over to an eligible retirement plan will be subject to 20 percent federal income tax withholding, and state income tax if required by your state. If you are younger than age 59½, the withdrawal will also be subject to a 10 percent federal excise tax for early distribution, based on IRS rules. If you are a pastor, any withdrawal you make may not be subject to taxes under the clergy housing allowance tax exemption; however, taxes are withheld at the time of distribution.

Distributions from your account while you are employed

When an eligible employer is sponsoring you in the plan, you can make limited withdrawals from your account before separating from service. Withdrawals

- are allowed after you reach age 59½
- may be allowed in case of hardship
- may be allowed in case of disability (as defined by the Social Security Administration)

Withdrawals reduce retirement income

If you make withdrawals from your retirement account, your account balance will be smaller now and in the future. The negative impact of withdrawals on future retirement income can be substantial, as amounts removed from the plan no longer contribute to the tax-deferred compounding that occurs daily within your retirement account.

Withdrawal payments

Generally, single withdrawal payments are processed in three to five business days after Mellon receives the completed form.

Withdrawals may be subject to taxes

Your withdrawal may be subject to 20 percent federal tax withholding and state tax (in certain states where required). Also, withdrawals made while you are employed (including hardship withdrawals) before age 59½ may be subject to an additional 10 percent early distribution tax. Distributions from your account made after you retire from ELCA service are not subject to the early distribution tax if you are at least age 55.

Distributions from your account

Withdrawal payments

You may request a withdrawal in a single payment or in a series of monthly, quarterly, semi-annual or annual periodic payments. You specify the percentage or dollar amount. However, hardship withdrawals must be paid in a single payment.

If you are married

Your spouse must give written, notarized consent to any distribution you request from your retirement account.

Housing allowance available only in a church-sponsored plan

If you are a pastor considering rolling an amount out of the Retirement Plan, please note: according to the IRS, any portion of your retirement account no longer held in a church retirement plan will lose its capability to be used as housing allowance.

You can make withdrawals from the following accumulations at any time:

- after-tax
- clergy housing equity
- pre-2003 additional
- predecessor plan IRA
- rollover

You may request a single payment, or periodic payments (monthly, quarterly, semi-annual or annual). Contact the Mellon Service Center for a withdrawal form.

Withdrawals at age 59½

When you are age 59½ or older, you can contact the Mellon Service Center to request a withdrawal form. If eligible, you may withdraw

- up to 100 percent of your own pretax accumulations (i.e., salary-reduction contributions plus earnings)
- up to 100 percent of any rollover and housing equity accumulation
- employer accumulations (i.e., contributions plus earnings) up to the following limits*:
 - 10 percent per year of your total employer accumulations on the prior Dec. 31 or \$10,000, if greater
 - a one-time withdrawal of 20 percent of your total employer accumulations on the prior Dec. 31, or \$20,000 if greater(This replaces the 10 percent or \$10,000 for that calendar year.)

The annual maximum amount may be paid in a single payment or in periodic payments. The 10 percent and 20 percent limits apply to all withdrawals of employer contributions plus earnings (accumulations). Any employer accumulations available for withdrawals may be transferred to your rollover accumulations under the Retirement Plan. (There are fewer limits on distributions from rollover accumulations than from employer accumulations.)

*Any employer accumulations transferred into the ELCA Retirement Plan are subject to the same (10 percent and 20 percent) limitations as employer contributions described above. However, you have separate withdrawal limits for employer accumulations and any accumulations transferred to this plan from another ELCA plan.

Withdrawals if you are disabled

If you are under 59½ and are totally and permanently disabled according to Social Security Administration guidelines, you can contact the Service Center and request a disability withdrawal. If eligible, you may make withdrawals from your own pretax and employer accumulations (i.e., contributions plus earnings).

Withdrawals due to financial hardship

If you are under 59½, you can request a hardship withdrawal from your employer and salary-reduction contributions in certain circumstances that meet the Internal Revenue Service definition of a hardship.

Employer accumulations (contributions plus earnings) are available for hardship withdrawals, subject to the same (10 percent and 20 percent) limitations as any other distribution from your employer accumulations. Earnings on your own pretax contributions are not available for hardship withdrawal.

The amount you request cannot exceed the amount necessary to satisfy the immediate financial need. However, the amount can include any amounts necessary to pay federal, state or local income taxes or penalties you reasonably expect to result from the hardship withdrawal.

Contact the Mellon Service Center to request a *Hardship withdrawal* form. If you are eligible,

- the hardship withdrawal will be paid as a single payment
- written spousal consent must be on the form, if you are married
- the withdrawal amount cannot be rolled over into an individual retirement account
- your own pretax contributions to this plan (and/or any other qualified plan sponsored by your employer) will be suspended for the next six months. Contact the Mellon Service Center for more details.

Steps to take

To request a hardship withdrawal

- 1** Contact the Mellon Service Center.
- 2** Complete a *Hardship withdrawal* form and attach documentation of the hardship, including written verification that the need cannot reasonably be met through reimbursement or compensation through insurance or other resources (e.g., letter of denial or explanation of benefit form). The written information must include the type of hardship, the total dollar amount and the dollar amount reimbursed from other sources. For losses due to a natural disaster, also include an original dated newspaper article describing the disaster.
- 3** Return the form and documentation to Mellon.
- 4** If you are eligible, a check will be mailed to your home address by the end of the month (provided the form was received at Mellon by the fifth of the month).

Distributions from your account

What qualifies as a financial hardship?

A hardship is an immediate or heavy financial need that cannot be satisfied by

- reimbursement or compensation from an insurance source
- distributions or loans from this plan or any other plan sponsored by your employer

30-day notice period

Generally, a total distribution of your available accumulations cannot be made from the plan until at least 30 days after you receive the withdrawal form. You may waive the 30-day notice period when completing the form.

Consult a financial adviser

You may want to consult a financial adviser prior to making withdrawals from your retirement account.

Reasons for a hardship withdrawal

You can request a hardship withdrawal due to an immediate and heavy financial need arising from:

- payment of medical expenses incurred by you, your spouse or your dependents, that are not eligible for reimbursement by insurance
- costs directly related to the purchase of your principal residence (excluding mortgage payments)
- payment of tuition and related educational fees for the next 12 months of post-secondary education for you, your spouse or eligible dependents
- payments necessary to prevent eviction from your principal residence or foreclosure on the mortgage of your principal residence (the request must be submitted within three months before the closing date)
- payments necessary to remedy losses to real or personal property caused by a natural disaster (e.g., tornado, flood or earthquake). You must provide the following with your request: documentation of the damage (including cost), a copy of your insurer's determination, and an original copy of a dated newspaper article describing the disaster.

Distributions from your account after separation from service

When you separate from ELCA service, you can leave your account invested in the ELCA Retirement Plan (if your account balance is at least \$7,500). You will receive the same level of service and account flexibility (e.g., online access, quarterly statements, ability to choose from among the 20 available investment funds, customer advocacy, etc.).

To make a withdrawal, contact the Mellon Service Center to discuss your options and tax consequences. You may withdraw

- up to 100 percent of your own pretax accumulations (i.e., salary-reduction contributions plus earnings) as a lump sum or periodic payments
- up to 100 percent of any rollover and housing equity accumulations

- employer accumulations (i.e., contributions plus earnings) up to the following limits:
 - 10 percent per year of your total employer accumulations on the prior Dec. 31, or \$10,000 if greater
 - a one-time annual amount of 20 percent of your total employer accumulations on the prior Dec. 31, or \$20,000 if greater

You can also annuitize some or all of your account balance when you are age 60 or older, or have completed 30 or more years of church service. (Annuity options are described on Pages 20 – 21.)

Based on IRS rules, you must begin receiving distributions from your account by April 1 following the year you reach age 70½ or separate from service, whichever is later.

When your account balance is less than \$7,500

If your account balance is less than \$7,500 when you separate from ELCA service, Mellon will contact you concerning your distribution options. Unless directly rolled over to an IRA or other qualified retirement plan, the entire value of your account, less applicable taxes, will be distributed to you in a check.

Rollovers out of the Retirement Plan

You can roll over some or all of an eligible withdrawal to another eligible retirement plan, including

- an individual retirement account (IRA)
- a 401(k) plan
- another 403(b) plan
- a 457(b) governmental plan

Any portion of a withdrawal that is not rolled over to another eligible retirement plan may be subject to 20 percent federal income tax withholding and state tax in certain states. Before age 59½, you may also be subject to a 10 percent early distribution tax.

Caution: If you are a pastor, you lose the right to claim the clergy housing allowance tax exemption when you make a rollover to a plan that is not administered by a church.

Separation from service

You are considered separated from service when you

- terminate your employment
- retire
- die
- fail to return to active service at the end of an authorized leave of absence (or authorized extension of the leave)
- when any other event occurs under your employer's or the Board of Pensions' policy that results in a termination of the arrangement for the performance of compensated service for your employer

If you are a pastor or rostered layperson, you are separated from service if your ELCA roster status is listed as "retired" or you are no longer listed on the ELCA roster.

Caution

Withdrawals will reduce the balance in your retirement account. If you intend to annuitize some or all of your retirement account when you are retired, withdrawals can reduce the amount of your lifetime monthly annuity.

Distributions from your account

Minimum required distributions

Based on IRS rules, you must begin receiving distributions from your account by April 1 following the year you reach age 70½ or retire, whichever is later. We will send a letter informing you of your distribution options.

Mandatory distributions

You will be paid the entire value of your retirement account when both of the following conditions apply:

- you have separated from ELCA service
- the total amount of your retirement account is less than \$7,500

Transfers to and from other ELCA retirement plans

You may transfer account balances from other ELCA retirement plans into this plan. You may also transfer your account balance from this plan into either the ELCA Retirement Plan for The Evangelical Lutheran Good Samaritan Society or the ELCA Master Institutional Retirement Plan, if you become a sponsored member of one of these plans.

Transfers to and from other church or 403(b) plans

The ELCA Board of Pensions may enter into agreements with other churches, church pension boards or other 403(b) plan sponsors to enable you to transfer your account balances. You may transfer account balances from approved plan sponsors into this plan. These amounts are 100 percent vested. You may also transfer your ELCA Retirement Plan account balance into these approved plans if you separate from service with an ELCA sponsoring employer or organization and become a sponsored member of one of these plans.

Receiving a lifetime monthly annuity income

Annuitizing to provide income for life

Annuitizing some or all of your retirement account balance will provide you (and any co-annuitant you designate) with a monthly income for life — protecting you from outliving your savings.

If you are age 60 or have completed 30 or more years of church service, you may begin receiving annuity payments as of your retirement date or defer the beginning of payments to a later date. If you decide to annuitize some or all of your account, you must do so by age 80 or upon separation from service, if later. If you have invested in the Participating Annuity Bridge Fund, you must begin receiving annuity payments by April 1 following the year you reach age 70½ or retirement, if later.

When you annuitize, you may choose from a number of different annuity options. The option you choose will affect the amount you receive when you start your monthly annuity payments, as well as the amount you or your co-annuitant receive after one of you dies. You also have the option to select a 15-year certain beneficiary payout option or no beneficiary payout. (The minimum monthly annuity payment is \$100.) Contact the Board of Pensions Service Center for more information about your annuity options.

Starting a lifetime monthly annuity

If you are annuitizing some or all of your account, you select the month to begin receiving annuity payments, as well as the amount and type of accumulations to be annuitized. During the month prior to annuitization, the Board of Pensions will ensure the necessary accumulations are transferred to the Participating Annuity Bridge Fund, and later moved to the Participating Annuity Fund (the source of all lifetime annuity benefits). You cannot make any changes to these accumulations after this occurs.

The amount of your initial monthly annuity payment will be based on the following factors when your accumulations are annuitized:

- the value of the accumulations you are annuitizing
- the form of annuity option you choose
- the form of beneficiary payout option you choose
- the life expectancies of you and your co-annuitant (if applicable), based on the mortality tables used by the Board of Pensions
- an assumed annual investment return rate of 4.5 percent

Minimum annuity payment

The minimum monthly annuity payment is \$100.

Steady, growing lifetime income

When you annuitize all (or some) of your account balance, the annuitized amount is moved into the Participating Annuity Fund, a special balanced fund designed to achieve attractive long-term investment returns that help your annuity payments keep pace with inflation.

As year-to-year market returns fluctuate, the Board of Pensions also uses a unique tool — the interest-crediting rate — to stabilize your annuity income, with the goal of increasing your monthly annuity payments every year.

The Participating Annuity Fund and interest-crediting rate work together to deliver to you a lifetime stream of annuity income that grows steadily over the years.

Receiving a lifetime monthly annuity income

When your spouse is not your co-annuitant

If you are married and do not choose your spouse to be your co-annuitant, your spouse must complete the spousal consent section on your *Annuity application* form and have her or his signature notarized before returning the form to the Board of Pensions.

Are you eligible to retire?

You are eligible to retire when both of the following apply:

- you are age 60 or older, or have completed 30 years of combined ELCA and predecessor church service
 - you have separated from paid ELCA service
-

Ready to retire?

Call the Board of Pensions Service Center at least four months prior to the date you would like to retire for information on the retirement process.

You choose an option for your annuity

The Retirement Plan offers a number of options for your annuity. The option you choose will affect the amount you receive when you start your monthly annuity payments as well as the amount you or your co-annuitant will receive after one of you dies.

If you choose anything other than the single-life annuity option, you will have a co-annuitant — someone who shares in your annuity benefits according to the option you choose. If you are married, your co-annuitant is usually your spouse. If you are married and wish to choose a single-life annuity or designate a co-annuitant other than your spouse, your spouse must provide written, notarized consent to the Board of Pensions.

Options for your annuity

The options for your annuity are described below. You select the option that will best meet your and your family's financial needs in retirement.

Single-life annuity

This annuity pays a monthly benefit to you while you are alive. Benefits end at your death, unless you choose the 15-year certain beneficiary payout option. In this case, your beneficiary will receive any remaining monthly payments if you die before receiving 180 payments.

Joint-and-survivor annuity

- 100 percent
- 80 percent
- 60 percent

This form of annuity pays a monthly benefit to you and your co-annuitant while you are both alive, with continuing benefits to the survivor after one of you dies. The amount paid to the survivor is either the same as the amount payable while you were both living (i.e., 100 percent), or a percentage of the amount payable while you were both alive (i.e., 80 percent or 60 percent), depending on the option you choose.

Joint-and-contingent annuity

- 80 percent
- 60 percent

This form of annuity pays a monthly benefit to you and your co-annuitant while you are both alive, with continuing benefits to the survivor after one of you dies. The survivor benefit depends on who dies first. If your co-annuitant dies first, you will receive the same amount payable while you were both alive. If you die first, your co-annuitant will receive 80 percent or 60 percent of the amount payable while you were both alive, depending on the option you choose.

If you do not choose an option for your annuity

If you are married, payments will be made in the form of a joint-and-survivor annuity option with 100 percent to either survivor. The 15-year certain beneficiary payout option to your designated beneficiary will also apply.

If you are not married, payments will be made in the form of a single-life annuity option, and the 15-year certain payout option to your designated beneficiary will also apply.

Annual annuity increases

The goal of the Board of Pensions is to increase the amount of your lifetime monthly annuity income at approximately the rate of inflation over a period of years. Any percentage increase applies to all payments made to you, your co-annuitant and beneficiaries.

Each year the Board of Pensions determines the rate of interest to credit the Participating Annuity Fund by using a smoothing formula that blends the fund's long-term expected rate of return and its actual 12-month return, then adjusting for mortality experience.

The first 4.5 percent of interest credited each year is used to continue existing annuity payments. Any interest credited in excess of 4.5 percent is available for annuity increases, which are applied the following Jan. 1.

Beneficiary payout option

When you annuitize some or all of your account, you must select a payout option for your designated beneficiary. You can elect the 15-year certain beneficiary payout option or no beneficiary payout.

If you elect the 15-year certain beneficiary payout option and both you and your co-annuitant die before 180 total monthly payments have been made, payments will continue to your designated beneficiary for the remainder of the 180 months (or a lump-sum payment can be made). If you elect this option in conjunction with a single-life annuity and you die before receiving 180 monthly payments, your designated beneficiary will receive the remaining payments or a lump sum.

If you elect no beneficiary payout, all benefits under the plan stop when you and your co-annuitant (if applicable) die. (This option provides the highest initial monthly payment because it has no beneficiary payout.)

Receiving a lifetime monthly annuity income

When to expect your first annuity check

Your retirement account will be annuitized the first day of a month. You can expect to receive your first annuity check at the end of that month. For example, if you start annuity income on July 1, your first check would arrive about July 31.

If you die before receiving 180 monthly payments

When you annuitize some or all of your accumulations, you (and your co-annuitant) will receive annuity income for life.

If you elected a joint-annuity option with the 15-year certain beneficiary payout option, and you and your co-annuitant both die before receiving 180 monthly annuity payments, your designated beneficiary will receive the remaining payments or a lump-sum payment.

If you elected the single-life option with the 15-year certain beneficiary payout option and you die before receiving 180 monthly annuity payments, your designated beneficiary will receive the remaining payments or a lump-sum payment.

If you are re-employed while receiving annuity payments

If you are re-employed in ELCA service and your eligible employer sponsors you in the Pension and Other Benefits Program, your monthly annuity payments will not end, and you and your employer may make contributions to your active account. These new contributions would be available for withdrawals and rollovers, subject to the limits described on Page 14.

Survivor benefits

If you are under age 70½ when you die

Surviving spouse — If you are married and die while you still have an “active” account under the ELCA Retirement Plan (and your surviving spouse did not waive the rights to your retirement benefits by giving written, notarized consent to the designation of another beneficiary), your surviving spouse has the same options (for the accumulations in the account) as any member who is separated from service. A surviving spouse can designate beneficiaries for her or his retirement benefits, make investment decisions, and transfer accumulations to the Participating Annuity Bridge Fund effective the month following your death or later. She or he is also eligible to take distributions from active accumulations (excluding accumulations in the Participating Annuity Bridge Fund) and to annuitize at any time.

Distributions, however, must begin by the end of the calendar year following the year of your death, or the end of the year in which you would have reached age 70½, whichever is later. In addition, accumulations in the Participating Annuity Bridge Fund must be annuitized by the end of the calendar year following the year of your death, or the end of the year in which you would have reached age 70½, whichever is later.

- **Withdrawals** — Your surviving spouse can make withdrawals and rollovers from the account, subject to the limits described on Page 14. These distributions will not be subject to the 10 percent early distribution tax, if she or he is under age 59½.
- **Single-life annuity** — Your surviving spouse can annuitize some or all of the retirement account in the form of a single-life annuity at any age. The amount of the monthly annuity payment is based on the value of the annuitized accumulations from your retirement account, and your spouse's age at the time the account is annuitized. The 15-year certain beneficiary payout option will not be available if your surviving spouse is age 70½ or older at the time annuity payments begin.

If you are unable to care for your affairs

The Board of Pensions will determine whether your retirement benefits may be paid to your guardian, conservator, or other legal personal representative if you are unable to care for your affairs because of a mental or physical condition. The Board of Pensions assumes no liability with respect to these payments and is not obligated to question the competence of any person to receive payments.

Annuity option for a surviving spouse, former spouse or beneficiary

The only annuity option available to a surviving spouse, a former spouse or a beneficiary is a single-life annuity with one of the following:

- no beneficiary payout
- a 15-year certain beneficiary payout option, if she or he has not reached age 70½ when the annuity begins

Survivor benefits

Beneficiary under age 21

A beneficiary who is under age 21 at the time a survivor benefit payment is to be made, will receive monthly withdrawals in an amount determined by her or his legal guardian, but not less than \$250 per month. Monthly withdrawals will continue to your beneficiary until she or he reaches age 21. At age 21, your beneficiary will be entitled to the remaining account balance, if any.

If you are 70½ or older when you die

If you are receiving required minimum distributions from your account when you die, the remaining payments will be paid to your designated beneficiary at least as rapidly as under the method of distribution selected by you.

Other beneficiaries — If you have an active account balance when you die and you do not have a surviving spouse (or if your spouse has consented to your designating another beneficiary), the entire balance in your account will be paid to your designated beneficiaries in the percentages specified by you. (This includes any accumulations in the Participating Annuity Bridge Fund that have not been annuitized.)

Your beneficiary has the same options with your account as any member who is separated from service, including making withdrawal or annuitizing the account. If your designated beneficiary elects an annuity form of benefit, it must be a single-life annuity. However, the annuity option is not available to a beneficiary who would be age 70½ or older at the start of payments, nor to a designated beneficiary that is an estate or other entity.

Annuity payments must begin prior to the end of the calendar year following the year of your death. If a beneficiary dies prior to receiving the entire benefit, the remaining amount will be paid to the estate of the designated beneficiary.

Any amount in the Participating Annuity Bridge Fund at the time of your death will be transferred into an account on behalf of the designated beneficiary and invested as directed. If the beneficiary does not make an investment allocation, the accumulations will be invested in the ELCA 60e Balanced Fund.

If you die while receiving a lifetime monthly annuity

If you die while receiving a lifetime monthly annuity, payments will continue to your co-annuitant (if any) based on the annuity option you chose.

If you chose the 15-year certain beneficiary payout option and do not have a co-annuitant, any remaining payments will be paid monthly or as an equivalent lump sum, at the election of your designated beneficiary or the Board of Pensions.

If your surviving spouse remarries, her or his monthly annuity payments will not be reduced as a result of the remarriage.

Your beneficiary designation

It is important to designate beneficiaries for your retirement account on the form provided by the Board of Pensions. Your beneficiaries will be entitled to the entire balance in your retirement account, and if annuitized, to any remaining annuity payments under a 15-year certain beneficiary payout option when you die.

Keeping your beneficiary designation up-to-date will ensure proper payment of benefits to your beneficiaries when you die. Your beneficiary designation takes precedence over a personal will, and applies to all accumulations in your account (salary-reduction contributions, employer contributions and rollover contributions).

You can name an individual, trust, foundation, charitable organization or your estate as your beneficiary. Beneficiary designations are effective when the Board of Pensions receives the completed form from you. You may change your beneficiary designation at any time by calling (800) 352-2876 and requesting a beneficiary designation form, or by downloading the form from our web site at www.elcabop.org.

You elect one of the following options:

- automatic beneficiary designation
- primary and contingent beneficiary designation

Automatic beneficiary designation

If you select this option on the form, complete the name, birth date and Social Security number for each individual. This will help us locate the beneficiary in the event of your death. If you die, benefits will be paid to individuals in the first of the following categories in which there are survivors:

- your surviving spouse
- your surviving children (i.e., natural, adopted and stepchildren) except if any child predeceases you and leaves surviving descendants (i.e., your grandchildren, great-grandchildren, etc.), those descendants will take the share their parent would have taken if living, by right of representation
- your surviving parents
- your surviving siblings
- your estate

Designate separate beneficiaries

Retired members who annuitize some of their accumulations can designate separate beneficiaries for "active" and "annuitized" accumulations. A beneficiary form is available from the Board of Pensions Service Center or on our web site.

Special note

While providing names and Social Security numbers is important, once you select the automatic beneficiary designation option, all members of a class (e.g., all your children) will receive an equal share, even if not listed.

Your beneficiary designation

Review your beneficiary information regularly

Pay special attention to your beneficiary designation if you experience a life event such as marriage, divorce, birth or adoption of a child, death of a spouse or child, death of a primary beneficiary, retirement or starting an annuity.

No designated beneficiary

If your beneficiary is not designated on a form provided by and filed with the Board of Pensions prior to your death, benefits will be paid to individuals in the first of the categories listed under the *Automatic beneficiary designation* (see Page 25) in which there is a survivor.

In the event of divorce

A divorce automatically revokes any designation of a spouse as your beneficiary. You may designate your former spouse as your beneficiary, but you must complete a new beneficiary designation form dated after the date of the divorce decree naming her or him as your beneficiary. If a new form is not filed, the designation of your former spouse as beneficiary is void and your non-spousal beneficiaries become primary.

Primary and contingent beneficiary designation

If you wish to name a person other than your spouse (or in addition to your spouse), or an entity (such as a foundation, charitable organization or your estate), complete this section on the form instead of the automatic beneficiary designation section.

If you are married, you must have your spouse's written, notarized consent to designate any person or entity other than, or in addition to, your spouse as your beneficiary.

If a primary beneficiary predeceases you, that beneficiary's share will be divided proportionately among your surviving primary beneficiaries. Your contingent beneficiary or beneficiaries receive payment only if all primary beneficiaries predecease you. If a contingent beneficiary predeceases you, that beneficiary's share will be divided proportionately among your surviving contingent beneficiaries. If all your primary and contingent beneficiaries predecease you, the automatic beneficiary provision will apply.

Members who are married

If you are married, your spouse must be your sole primary beneficiary unless she or he agrees to the designation of another beneficiary and gives written, notarized consent on a form provided by the Board of Pensions.

If you marry (or remarry) after filing a beneficiary designation form with the Board of Pensions, your prior beneficiary designation will no longer be valid and your new spouse will automatically become your sole primary beneficiary. To ensure proper payment of benefits, complete a new form and return it to the Board of Pensions when you marry (or remarry).

Members who are single

If you are not married, your beneficiary may be anyone you choose to designate.

Eligible trusts

You may name a trust as your beneficiary. If it is an "eligible trust," then references in the Retirement Plan pertaining to life expectancies include individuals who are beneficiaries of trusts. A trust is an "eligible trust" if it meets the following conditions:

- is a valid trust under state law, or would be if it had assets
- is irrevocable, or will be upon your death
- your beneficiaries are clearly identified in the trust document (within the meaning of Treasury Regulations §1.401(a)(9)-1, A-2), as well as the portion of the trust to which they are entitled and the conditions on their entitlement
- a copy of the trust document is provided to the Board of Pensions at your death

If a trust meets these requirements, the relevant life expectancy of your designated beneficiary (for purposes of calculating distributions) is the life expectancy of your trust beneficiary who has the shortest life expectancy.

A trust that does not meet the above requirements will be treated as having no life expectancy, but still may be named as your designated beneficiary.

Tax information

Pretax contributions

All salary-reduction and employer contributions are pretax; they are not subject to federal income tax at the time they are contributed to the plan. Earnings on these contributions are also tax deferred.

For pastors, contributions are also not subject to Social Security taxes or creditable toward Social Security benefits.

Taxable benefits

All plan benefits — including withdrawals, annuity payments and survivor benefits — are taxable for federal and state income tax purposes. There are three important exceptions:

- 1 after-tax contributions
- 2 amounts rolled over to another eligible retirement plan
- 3 clergy housing allowance

After-tax contributions

If you have made after-tax contributions (e.g., under a predecessor plan), only the investment earnings on these contributions are subject to tax upon distribution.

Contribution limits

Tax laws permit you and your employer to make pretax contributions for your retirement. In 2004, annual contributions made to your 403(b) plan(s) may be as much as 100 percent of your taxable compensation plus pretax, salary-reduction contributions or \$41,000 whichever is less. However, you have only one (annual) limit regardless of the number of plans in which you participate.

In 2004, the annual limit that can be contributed from salary reduction is \$13,000 for most members. If you have completed 15 years of service with an ELCA organization and have under-contributed in the past, you may be eligible to make additional contributions. These limits apply to all plans in which you participate. If you are age 50, you may also contribute an additional \$3,000 “catch-up” contribution.

Because the tax laws are complex, we encourage you to contact the Service Center to receive an individual calculation of your contribution limit if you

- want to contribute the maximum amount and you have at least 15 years of church service
- are a pastor with a large clergy housing allowance tax exemption

Rollovers

You can defer taxation of a withdrawal by making a rollover (i.e., depositing the amount withdrawn into another eligible retirement plan within 60 days). If you make a direct rollover of any portion of your distribution from your employer accumulations to another eligible retirement plan (e.g., a 401(k) plan, a 403(b) plan, a 457(b) governmental plan or an IRA), you are not subject to current income tax on the amount rolled over. You are, however, subject to income taxes when making subsequent withdrawals from those plans.

20 percent federal income tax withholding

If you do not roll over your withdrawal directly to another tax-favored arrangement, the Board of Pensions is required to withhold 20 percent of the withdrawal for federal income tax and state income tax, where

required. If you are receiving a required minimum distribution or a hardship withdrawal, you may choose to have 10 percent (or more) withheld, or no withholding. All distributions should be included in your taxable income for the year (except after-tax contributions).

Clergy housing allowance

When filing your income tax return, you may declare a clergy housing allowance tax exemption for distributions from contributions made while you were a member of the clergy.

The Board of Pensions designates 100 percent of your distributions from the plan as housing allowance for all contributions (and earnings) that were made while you were serving under call. However, it is up to you to justify to the IRS how much may be excluded as housing allowance, based on §107 tax code limits.

Caution: You lose the right to claim the clergy housing allowance tax exemption if you roll over a distribution to another tax-favored arrangement that is not a church plan.

Note: The clergy housing allowance tax exemption is not extended to your surviving spouse or beneficiaries.

Penalty tax

Withdrawals prior to age 59½ may be subject to a 10 percent tax penalty, in addition to federal and state income tax. However, you are not subject to a penalty tax on any

- portion of a withdrawal that is rolled over or transferred to another tax-favored arrangement
- portion of a withdrawal that is designated and used as a housing allowance under Internal Revenue Code 107
- withdrawal made after separation from paid ELCA service, provided you were age 55 (or older) at separation
- series of essentially equal withdrawals scheduled to be made over your lifetime, provided the withdrawals begin after separation from ELCA service
- withdrawal under a Qualified Domestic Relations Order
- hardship withdrawal used to pay medical expenses that are deductible under federal income tax laws

Clergy housing allowance act

The clergy housing allowance act that was signed into law May 20, 2002 reinstates the fair market rental value limitation for ordained pastors who claim housing allowance.

The amount that can be excluded from taxable income as housing allowance is always the smallest of the

- 1 amount officially designated in advance as "housing allowance" by your congregation or church organization,
- 2 amount spent for your primary residence (down payment, mortgage principal and interest, utilities, taxes, insurance, furnishings, maintenance, etc.) or
- 3 fair rental value of your home, including furnishings and cost of utilities (owned or rented).

Divorce

Steps to take

To notify the Board of Pensions when there is a divorce

- 1** Notify the Board of Pensions about a pending divorce as soon as possible. We will provide you with information that may assist your family, legal counsel and others regarding your assets in the ELCA Retirement Plan.
- 2** Send a copy of the executed divorce decree to the Board of Pensions after the divorce is final. To prevent processing delays, the decree should include the QDRO, as well as any other agreement incorporated or referenced in the decree (e.g., a property settlement agreement).
- 3** Provide the Board of Pensions with a new beneficiary designation form.

Things to consider

As divorce proceedings begin, early consideration should be given to

- the QDRO (a court order, judgment or decree dividing marital assets)
- your Retirement Plan assets
- changing the beneficiaries for your retirement account

Qualified Domestic Relations Order (QDRO)

If you are considering divorce, please remember that the disposition of your active accumulations and/or annuity payments under the ELCA Retirement Plan is governed by the Internal Revenue Code and the terms of the final divorce decree.

The QDRO, or court order, judgment, or decree that acknowledges the rights of an alternate payee (your former spouse, child or other dependent) to receive a portion of your retirement account, must comply with Section 414(p) of the Internal Revenue Code and the terms of the ELCA Retirement Plan. The Board of Pensions will honor only domestic relations orders or decrees that satisfy these requirements.

If no court order is issued concerning your retirement account, health coverage, or disability payments, the divorce documents and property settlement agreement (indicating that the retirement account is to remain in your control) should be sent to the Board of Pensions.

A QDRO will **not** be binding on the Board of Pensions if it

- contains a form of benefit, payment or option not permitted under the plan
- requires the plan to pay an amount greater than the value of your retirement account
- requires the plan to pay benefits already being paid to another alternative payee due to a previous QDRO

If you divorce when your account is active

Up to 100 percent of your retirement account may be assigned to an alternate payee as the result of a stipulation or divorce decree incorporated into the QDRO. The amount assigned will be transferred to a separate account in the alternate payee's name. Any remaining accumulations will remain in your name.

Following the assignment of a portion of your retirement account, your alternate payee has the same options as any member of the Retirement Plan who has separated from service. This includes the right to

- make investment decisions with respect to the assigned retirement account
- make limited withdrawals (the alternate payee must begin taking minimum withdrawals by April 1 following the year she or he reaches age 70½, if she or he does not annuitize the retirement account)
- start lifetime monthly annuity payments at any time after reaching age 60 (See Page 19 for more details.)

If you divorce while receiving lifetime monthly annuity income

If you divorce while receiving a lifetime monthly annuity income, your alternate payee will receive the assigned portion of the annuity determined by the QDRO. When one of you dies, your (or your alternate payee's) annuity income will be determined by the joint annuity option and percentage selected by you (i.e., joint and survivor or joint and contingent) when you annuitized your retirement account.

What is a QDRO?

A Qualified Domestic Relations Order is any judgment, decree or order (including approval of a property settlement agreement) that creates or recognizes the existence of an alternate payee's right to receive all or part of your retirement benefits.

Alternate payee

An alternate payee may be your spouse, former spouse, child or other dependent.

Appeals procedure

Start by contacting the Service Center

If you have a concern about a benefit under this plan, call or write the Service Center at the Board of Pensions. See Page 1 for contact information.

Written appeal

If you file a written appeal with the president of the Board of Pensions, be sure to include

- the facts of your case
- any new or additional information not considered in the initial decision
- the outcome you desire

Initial step to resolve a concern

If you apply for a benefit under the plan and the benefit you receive is not the benefit you expected, or the benefit is denied and you believe you are entitled to a benefit under the plan, contact the Service Center.

The Board of Pensions cannot grant exceptions to the terms of the benefit plan. The Board of Pensions must administer the plan provisions as they were adopted by the Constituting Convention of the ELCA and as they are amended from time to time by the Church Council and Churchwide Assembly, in a consistent manner for all members.

President of the Board of Pensions

If your concern is not resolved by following the initial procedure, you may file a written appeal with the president of the Board of Pensions within 180 days of your receipt of any adverse determination. Include the facts of your case, any new or additional information not considered in the initial decision and the outcome you desire.

The president will review your claim with advice and counsel of the internal appeals committee, which shall consist of at least three staff members who were not involved with the initial decision. The president will respond in writing within 30 days of receipt, unless the president notifies you of the need for an additional 30 days.

The president may only approve an appeal if it is determined that

- an error was made in the initial benefit determination
- the appeal involves matters relating to plan interpretation

In the case of changing technology or circumstances, the president may recommend an expansion of benefit coverage requiring plan amendments, which may or may not be retroactive. The board of trustees of the Board of Pensions and the Church Council must approve all such plan amendments.

Appeals committee

An appeal may be filed with the appeals committee of the board of trustees of the Board of Pensions within 60 days of your receipt of the president's written response if you are dissatisfied with the decision of the president.

The appeals committee will consist of not less than five or more than seven members of the board of trustees, at least one of whom must be a participant in the Pension and Other Benefits Program. Additionally, the committee may include outside independent consultants with special expertise in the area of the appeal, who will serve with voice but without vote.

The appeals committee will schedule a meeting within 30 days of a request for review. The final decision of the appeals committee will be forwarded to you within 60 days of receipt of the appeal. All decisions of the appeals committee are final.

Court system

In the event you have exhausted the appeals procedure previously described, and are dissatisfied with the final decision of the appeals committee of the Board of Pensions, you may initiate legal action in the Minnesota fourth Judicial District Court, Hennepin County. Any removal of such action must be to the United States court for the District of Minnesota.

Miscellaneous provisions

Rules of construction and applicable law

The plan is defined and administered according to the laws of the State of Minnesota, to the extent that the laws of the United States of America do not pre-empt these laws.

No other benefits

No benefits other than those specifically stated are to be provided under the Retirement Plan.

Disclosure of information

Upon your request, the Board of Pensions or Mellon will make available copies of the latest

- account balances
- plan document
- summary plan description
- trust document

Limitation of liability

The Board of Pensions is not liable for the failure of any employer to enroll you as a sponsored member in the plan or for the failure of any employer to make contributions to the plan on your behalf.

Obligations of a sponsored member

As a member of the ELCA Retirement Plan, you agree to comply with all the requirements of the Board of Pensions regarding enrollment and administration of the plan. This includes, but is not limited to, providing your

- date of birth
- marital status
- marital and family support obligations
- Social Security number

If you do not comply with reasonable requirements or knowingly provide false, inaccurate or misleading information to the Board of Pensions, you must reimburse the Board of Pensions for reasonable expenses and damages incurred by the Board of Pensions as the result of such failure. The Board of Pensions may charge your retirement account for the additional expense.

Obligations of a participating employer

By sponsoring an eligible employee in the Retirement Plan, the participating employer agrees to

- be bound by the terms of the Retirement Plan, including future amendments and any rules or procedures adopted by the Board of Pensions
- provide the necessary information to the Board of Pensions for the administration of the Retirement Plan
- promptly notify the Board of Pensions of any Internal Revenue Service audit or change in code status that could cause the employer to cease to be "controlled by, or associated with" the ELCA

Any employer may discontinue participating in the plan by providing written notice to the Board of Pensions and complying with any procedures established by the Board of Pensions for discontinuing

participation. The Board of Pensions may discontinue the participation of an employer if the Board of Pensions, in its sole discretion, determines that the employer is no longer an eligible employer as defined by this plan, or if the employer has failed to comply with the provisions of this plan.

Correction of errors

It is recognized that, in the operation and administration of the Retirement Plan, certain mathematical and accounting errors may be made or mistakes may arise for various reasons, including factual errors in information supplied to the Board of Pensions, to Mellon, or to the Retirement Plan trustees. The Board of Pensions has the power to cause equitable adjustments to be made to correct such errors as the Board of Pensions, in its sole discretion, considers appropriate. These adjustments will be final and binding on all persons.

Amendment

The ELCA Churchwide Assembly, the ELCA Church Council, or the ELCA Board of Pensions may propose amendments to the plan. All proposed amendments must be submitted to the board of trustees of the Board of Pensions for recommendation before final action is taken by the Church Council. Also, instead of taking final action, the Church Council has the discretion to submit any proposed amendment to the Churchwide Assembly for final action.

No amendment will reduce the account balance of any individual or reduce the amount of an annuity benefit in pay status on the effective date of the amendment.

Termination

The ELCA Church Council may terminate the Retirement Plan by following the procedure previously described for amending the plan. The termination of the plan will not reduce your account balance. If the plan is terminated, the existing accumulations in your account may be distributed to you or your beneficiaries in such manner as the Board of Pensions, in its sole discretion, determines is fair and equitable.

Source of benefits

All benefits to which you are entitled under this plan will be provided only out of the appropriate investment fund(s), and only to the extent that such investment fund(s) is adequate.

Miscellaneous provisions

Non-guarantee of employment

Nothing contained in this plan shall be construed as a contract of employment between you and your employer, or as a right to be continued in the employment of your employer, or as a limitation on the right of the employer to discharge any of its employees, with or without cause.

Confidentiality

Without your consent, the ELCA Board of Pensions will not disclose confidential information relating to your account to any person other than you or your spouse. In addition, no employee of the Board of Pensions, your employer or Mellon will have access to confidential information relating to your account, except those employees who are required to have this information in order to ensure proper administration of the plan.

The Board of Pensions maintains a written confidentiality policy as part of its personnel policies. However, the Board of Pensions may disclose information pursuant to any order or request of a court or administrative agency, which determines is validly issued and binding on the Board of Pensions.

Unclaimed benefits

If you do not claim benefits within three years from the date they were due to be paid to you (as determined by the Board of Pensions or Mellon) and you cannot be located, you will be presumed dead and benefits (if any) under this plan will be paid to your designated beneficiary.

If your designated beneficiary cannot be found or is no longer living, or if you did not name a beneficiary, then your accumulations will be paid in a lump sum to the person or persons in the first of the classes of beneficiaries under the automatic payment order as described on Page 25.

Administrative information

Board of Pensions management

The ELCA Board of Pensions controls and manages the operation and administration of the Retirement Plan and makes all decisions and determinations pertaining to the plan. The Board of Pensions empowers its president or other corporate officers, and employees (acting alone or in committee), as well as Mellon, to act within the scope of the plan.

Fund managers

The ELCA funds are not mutual funds, but rather investment pools managed separately under the supervision of the Board of Pensions. The Board of Pensions is responsible for establishing the investment objectives and strategy for the various investment choices in the ELCA Retirement Plan. The Board of Pensions' investment staff identify the most qualified money managers in each investment category to assist in carrying out the Board of Pensions' strategy and achieving investment success. A complete list of investment fund managers for each ELCA fund is available upon request.

Utilizing financial futures and/or options

In managing all the funds, the Board of Pensions may from time to time utilize financial futures and/or options to help control overall portfolio risk and enhance portfolio values and returns. The Board of Pensions is not required to register as a commodity pool operator under the Commodity Futures Trading Commission (CFTC) rules and will not be subjected to the operating criteria of CFTC Rule 4.5. Nevertheless, the Board of Pensions will use financial futures and options prudently in the context of total portfolio circumstances for the purposes of furthering the objective of the plan.

The Retirement Plan, the Board of Pensions and each of the investment funds are not subject to registration, regulations or reporting under the U.S. federal or state securities laws. Therefore, you and your beneficiaries will not be afforded the protections of those provisions. Plan administration and plan asset management are subject to prudent investor and exclusive benefit rules.

Transfers to and from the Retirement Plan

If you cease to be a sponsored member in the Retirement Plan and then become a sponsored member in the Master Institutional Retirement Plan or the ELCA Retirement Plan for The Evangelical Lutheran Good Samaritan Society, you may elect to transfer accumulations held in your retirement account to that plan. The transfer will include your active retirement account balance, (not including any accumulations in the Participating Annuity Bridge Fund).

Also, if you cease to be a sponsored member in the Master Institutional Retirement Plan or the ELCA Retirement Plan for The Evangelical Lutheran Good Samaritan Society, and become a member of the Retirement Plan (or have a retirement account under the Retirement Plan from previous church service), you may transfer accumulations in that account to your Retirement Plan account.

Transfers may also be possible between the Retirement Plan and a retirement plan administered by another church board.

For additional details, contact the Service Center by phone or e-mail.

Fiduciary standards

Fiduciaries

Fiduciaries (i.e., those responsible for the plan's assets) invest your plan contributions expressly with your interest in mind and in agreement with the following requirements:

- for the exclusive purpose of providing benefits to you, less reasonable expenses of administering the plan
- with the care, skill, prudence and diligence under the current conditions that a prudent person with like character, similar aims and knowledge of fiduciary matters would use
- by diversifying the investments of the plan in order to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so
- in accordance with the provisions of ELCA Retirement Plan Trust

Prudent investor rule

Managers and trustees administering or investing retirement plan assets are bound by the "prudent investor" rule. This common-law concept has evolved through the years and is set forth in the American Law Institute's Restatement of the Law of Trusts, Third, section 227, which states in part that:

The trustee is under a duty to the beneficiaries to invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements and other circumstances of the trust.

(a) This standard requires the exercise of reasonable care, skill and caution, and is to be applied to investments not in isolation but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the trust.

(b) In making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is prudent not to do so.

Many states, including Minnesota, have incorporated the prudent investor rule in their statutes. The ELCA Board of Pensions, a Minnesota non-profit corporation, is governed by Minnesota Statutes, §501B.151, which sets out the statutory requirements governing trust investments.

Exclusive benefit rule

Code section 403(b)(9), which enables the ELCA to offer a 403(b)(9) "church plan," imposes exclusive benefit and non-diversion rules.

Under these rules, the assets of the plan cannot be used for or diverted to purposes other than for the exclusive benefit of members and their beneficiaries. Reasonable administration costs, including costs associated with informing employees and employers of the availability of the program, may be charged against member accounts.

Glossary

403(b)

A pretax retirement plan sponsored by a non-profit religious, charitable or educational organization or a public school. Also referred to as a tax-sheltered annuity (TSA). All contributions and investment earnings are tax-deferred until distributed, usually after retirement.

Account

The total accumulations in your ELCA Retirement Plan account (including your salary-reduction and employer contributions and earnings). You have an account balance until it is reduced to zero.

Active account

You continue to have control over the accumulations in your account (i.e., make investment elections and distributions).

Annuitizing

The process of converting your ELCA Retirement Plan account into a lifetime monthly annuity income through a transfer to the Participating Annuity Fund. An annuity is a series of monthly payments to you, payable until your death.

Child

A child of a member is any:

- natural or legally adopted child of the member
- natural or legally adopted child of the member's spouse
- child who is a part of the member's household, pending legal adoption
- child who is a descendant of the member (e.g., grandchild)

Co-annuitant

An individual who shares in your lifetime annuity benefits according to the option you choose when your account is annuitized. If you are single, your co-annuitant may be anyone you choose. If you are married, your co-annuitant is usually your spouse. If you choose a co-annuitant other than your spouse, your spouse must provide written, notarized consent to the Board of Pensions.

Glossary

Defined compensation

Whether you are an ELCA pastor, rostered layperson or lay employee, annual defined compensation includes your base salary, before any pretax benefit contributions are deducted. If you are an ELCA pastor, your annual defined compensation also includes the amount of any Social Security tax allowance paid to you.

If you are an ELCA pastor, defined compensation also includes one of the following:

- if housing is not provided, the amount of any cash housing allowance paid to you
- if housing is provided, an additional 30 percent of your base salary and any Social Security tax allowance, plus any household furnishings or utilities allowance paid to you

Defined contribution plan

A retirement plan in which your employer's and your contributions are credited to your individual account and invested in one or more investment funds. Future benefits are based on your account balance. The ELCA Retirement Plan is a defined contribution plan.

Eligible rollover distribution

A distribution under applicable law of all or any portion of the balance of accumulations rolled over to this plan from another eligible retirement plan in a direct rollover. (A distribution made by hardship withdrawal, or in a series of equal periodic payments is not an eligible distribution.)

Employer contributions

Amounts paid to the plan by an employer for you with no corresponding reduction in your salary.

Individual retirement account (IRA)

A personal retirement savings plan to which a person may make pretax or after-tax contributions.

Investment decision

Your decision to have existing accumulations and/or future contributions invested in one or more of the plan's investment funds. If no choice is made, accumulations and contributions are invested in the ELCA 60e Balanced Fund.

Investment fund

A professionally managed pool of assets with a stated investment objective. The ELCA Retirement Plan offers a variety of investment funds to meet your objectives.

Lifetime annuity income

A guarantee that you (and your co-annuitant, if applicable) will receive a monthly annuity income until you (and your co-annuitant) die.

Mandatory distribution

You receive the entire value of your account after separation from ELCA service when the account balance is less than \$7,500.

Member

Any sponsored member, spouse, former spouse, surviving spouse, contingent annuitant or child of any sponsored member or any other designated beneficiary who is entitled to a benefit from this plan.

Participating Annuity Bridge Fund

A special balanced fund for investing your retirement plan accumulations before starting a lifetime annuity. Accumulations transferred into this fund cannot be withdrawn or transferred back to the retirement plan's 20 investment funds. These accumulations must be converted to an annuity by April 1 following the year you reach age 70½ (or retire, if later).

Pretax contributions

Contributions to a 403(b) or other qualified retirement plan for which taxes are postponed until the accumulations are distributed. Taxation of investment earnings is also deferred. (See also *Employer contributions*.)

Glossary

Required minimum distribution

The IRS requires you to begin taking minimum distributions (withdrawals) from your account when you reach age 70½, or separate from service if later.

Retirement account

The total accumulations in your account (including contributions and investment earnings). You have an active account balance, unless you convert all of your accumulations into a lifetime monthly annuity or reduce your account balance to zero.

Rollover

A method used to defer taxation of a withdrawal from a qualified retirement plan by transferring the amount directly to another tax-favored arrangement.

Salary-reduction agreement

This agreement allows your employer to withhold a specific percent or dollar amount from your paycheck to be contributed directly into a 403(b) account for your benefit. These contributions are tax deferred.

Tax-sheltered annuity (TSA)

A pretax retirement plan sponsored by a non-profit religious, charitable or educational organization or a public school. Also referred to as a Sec. 403(b) plan. All investment earnings are tax-deferred until distributed, usually after retirement.

Transfer contributions

A transfer of accumulations to this plan from another ELCA retirement plan.

Vesting

Your nonforfeitable right to benefits. All contributions to this plan are immediately and fully vested.

Index

- Account statement, 9
- Administrative information, 37
- Alternate payee, 31
- Annuity increases (annual), 21
- Annuity options, 20
- Annuity, 19 – 22
- Appeals procedure, 32
- Automatic beneficiary designation, 25
- Beneficiary designation, 25 – 27
- Beneficiary payout option, 21
- Beneficiary under age 21, 24
- Build-Your-Own-Series, 11
- Clergy housing allowance act, 29
- Confidentiality, 36
- Contribution agreement, 6
- Contribution limits, 7, 28 – 29
- Correction of errors, 35
- Death while receiving annuity, 24
- Defined compensation, 5
- Distributions while employed, 13
- Divorce, 30 – 31
- Eligible lay employee, 3
- Eligible pastor, 3
- Eligible rostered layperson, 3
- Eligible self-sponsoring pastor, 3
- Eligible trusts, 27
- Employer contributions, 5, 6
- Exclusive benefit rule, 38
- Fiduciaries, 38
- Fund managers, 37
- Housing allowance, 29
- Housing equity contributions, 6
- How your account is valued, 9
- Joint-and-contingent annuity, 21
- Joint-and-survivor annuity, 20
- Limitation of liability, 34
- Mandatory distributions, 18
- Minimum required distributions, 18
- Non-guarantee of employment, 36
- Obligations of a participating employer, 34
- Obligations of a sponsored member, 34
- Other beneficiaries, 24
- Participating Annuity Bridge Fund, 12, 19, 42
- Participating Annuity Fund, 19
- Penalty tax, 29
- PIN, 8
- Pretax benefit contributions, 5
- Primary and contingent beneficiary designation, 26
- Prudent investor rule, 38
- QDRO, 30 – 31
- Re-employment while annuitized, 22
- Requesting a distribution, 13
- Retirement calculator, 4
- Rollover contributions to the plan, 8
- Rollovers, 8, 17, 28
- Salary-reduction contributions, 7
- Select Series, 10
- Separation from service, 17
- Single-life annuity, 20
- Social purpose funds, 11
- Survivor benefits, 23 – 24
- Tax information, 28
- Taxable benefits, 28
- Transfer contributions, 8
- Transfers to/from other 403(b) plans, 18
- Transfers to/from other ELCA plans, 18
- Unclaimed benefits, 36
- Withdrawal payments, 13, 14
- Withdrawals at age 59½, 14
- Withdrawals due to financial hardship, 15
- Withdrawals if disabled, 15
- Your investment options (chart), 11
- Your retirement account, 4

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Donald Ray Clifford,

Debtor.

Case No.: 04-33909

Chapter 13 Case

MEMORANDUM IN SUPPORT OF THE TRUSTEE'S OBJECTION TO EXEMPTION CLAIM

FACTS

The debtor in this case filed for bankruptcy on July 6, 2004. The debtor is currently 58 years old. The non-filing spouse is currently 62 years old. The debtor is currently employed at ELCU Lutheran Church in Hanley Falls, MN as an Interim Pastor and has been so employed for 20 years. It appears from the debtor's schedule the debtor will continue working at ELCU Lutheran Church in Hanley Falls, MN in his current position. The debtor has not provided information regarding his retirement. The non-filing spouse is currently employed at The Dollar Stop and has been so employed for 2 years. It appears that the non-filing spouse will continue working at The Dollar Stop.

On the date of bankruptcy filing, the debtor had one pension which he alleges is not property of the estate and in the alternative he has exempted on his bankruptcy petition. The debtor's ELCA Retirement Pension (Evangelical Lutheran Church in America) has a value of \$150,000.00. The Trustee has not been provided with documentation to substantiate the exact value of the debtor's ELCA Pension.

The summary plan description indicates the ELCA is a defined contribution plan under Internal Revenue Code § 403(b)(9). See page 1 of Exhibit "A" attached hereto. As defined under 403(b)(9) of the IRC, the plan is a qualified pension created by a religious institution, in this case the ELCA. According to the ELCA Pension Plan withdrawals are limited by the plan, however, it appears that withdrawals can be made in certain emergency and hardship situations, and possibly at other times as well. See pertinent provisions of ELCA Pension Plan in the attached Exhibit "A" p. 13-16.

LEGAL DISCUSSION

The ELCA church pension plan of the debtor represents property of his bankruptcy estate pursuant to 11 U.S.C. §541 of the bankruptcy code.

I. Is the debtor's ELCA Pension Plan excluded from the bankruptcy estate pursuant to 11 U.S.C. § 541(c)(2)?

The debtor claimed his ELCA Pension Church Plan is excluded from the estate pursuant to 11 U.S.C. § 541(c)(2).

The U.S. Supreme Court's ruling in Patterson v. Shumate 504 U.S. 753 (1992) dealt with the analysis used in determining whether or not an asset is excluded from the estate by section 541(c)(2). The Court held that a debtor's interest in an ERISA qualified pension is outside the estate based on Section 541(c)(2).

The Supreme Court concluded that 11 U.S.C. §541(c)(2) "encompasses any relevant non-bankruptcy law, including federal law such as ERISA." Shumate 504 U.S. at 759. As a result, a bankruptcy estate will not include a pension, which is, among other things, subject to an enforceable limitation on alienation under ERISA.

In Shumate, the petitioner argued that the Supreme Court's construction of §541(c)(2), pursuant to which a debtor may exclude his interest in ERISA qualified pension plan from the bankruptcy estate, renders § 522(d)(10)(E) of the bankruptcy code superfluous.

In rejecting this argument, the Supreme Court noted that §522(d)(10)(E) exempts from the bankruptcy estate a much broader category of interests than §541(c)(2) excludes. For example, pension plans established by governmental entities and churches need not comply with subchapter I of ERISA, including the anti-alienation requirement of 206(d)(1). See 29 U.S.C. §§ 1003 (b)(1) and (2); 26 CFR § 1.401(a)-13(a) (1991); Shumate 504 U.S. at 763. The Supreme Court stated that the debtor's interest in these plans could not be excluded under § 541(c)(2) because the plans lack transfer restrictions enforceable under applicable non-bankruptcy law.

In a recent decision, this court ruled that a debtor's ELCA pension valued at \$88,000.00 was not exempt under 11 U.S.C. § 522(d)(10)(E) and that the debtor had to turnover the value of the plan. See In re: Linda D. Roesler, BKY 03-60504, decision of Dennis D. O'Brien, (August 26, 2003). Although the Court's order does not set forth the reasoning used in arriving at this conclusion, it is clear that this court had to determine that the pension plan was property of the estate and not excluded under 11 U.S.C § 541(c)(2). In that case, the debtor's attorney did argue that the ELCA pension plan at issue was excluded from the estate by reason of 11 U.S.C. § 541(c)(2). The attorneys for the bankruptcy estate argued successfully that the ELCA pension was included in the estate because it was a 403(b)(9) church plan and was therefore not governed by ERISA.

The debtor's ELCA Pension with a value of \$150,000.00 is a church pension similar to the one in Roesler, BKY No. 03-60504. The ELCA pension in question was created under § 403(b)(9) of the IRC, which states in part, "...the term retirement income account means a defined contribution program established or maintained by a church, a convention or association of churches..."¹ Section 1003(b) of

¹ The Trustee has not been provided with a complete copy of the debtor's ELCA pension plan. However, inasmuch as it is a church plan, and the summary indicates it is a defined contribution plan within the meaning of Code

ERISA states, “The provision of this subchapter (ERISA) shall not apply to any employee benefit plan if...(2) such plan is a church plan (as defined in § 1002(33) of this title) with respect to which no election has been made under § 410(d) of title 26...” 29 U.S.C. § 1003(b).²

Given the exclusion language contained in § 1003(b) of ERISA, the pension plan in question is not governed by ERISA given the plan’s creation as a church plan under § 403(b)(9) of the IRC. Thus, the pension in question is not excluded from the estate of the debtor by reason of the asset being “ERISA qualified.”

II. Is there other “non-bankruptcy law” that would allow the ELCA pension plan to be excluded from the bankruptcy estate under 11 U.S.C. § 541(c)(2)?

The pension plan in question is a § 403(b)(9) plan under the IRC; being so qualified there are certain tax benefits that accrue to the debtor/employee. Because the Trustee does not have the complete plan, it is not known if the plan has anti-alienation language.

If the pension in question contains anti-alienation language required under § 401(a)(13) of the IRC, but was excluded from ERISA (as a church plan) the question must be answered whether that the anti-alienation language is enforceable under non-bankruptcy law. The Supreme Court in Shumate decided to exclude plans from the bankruptcy estate if they contained anti-alienation provisions enforceable under ERISA. Tax qualification may be a necessary component for ERISA qualification given the interplay between ERISA and the IRC, but favorable tax treatment does not make the anti-alienation provision enforceable under ERISA unless ERISA itself requires the provision. Kellogg 179 B.R. at 386. In the Kellogg case, the debtor had a SEP plan and argued that the SEP plan’s anti-alienation provision is enforceable under ERISA, and secondly that because Massachusetts General laws prohibited the attachment of SEPs, the SEP plan should receive similar treatment under the bankruptcy code. In rejecting the debtor’s arguments, the court noted that the SEP plan gratuitously included an anti-alienation provision, which would not be enforceable under ERISA. The Kellogg court relied on the reasoning set forth in re Taft, 171 B.R. 497. Further, “The IRC provisions of §401(a)...relate solely to the criteria for tax qualification under the IRC and although a transfer in violation of the required anti-alienation provision could result in adverse tax consequences IRC 401(a) does not appear to create any substantive rights that a beneficiary or participant of a qualified retirement trust can enforce.” In re Craig, 204 B.R. 756, 760 (Bankr.D.N.D.1997); In re Acosta, 182 B.R. 561, 565 (N.D.Cal.1994). The language of § 541(c)(2) is quite clear that the restriction on transfer must be enforceable under non-bankruptcy law.

§403(b)(9), it is exempt from ERISA as the “church plan” was in the bankruptcy case of Linda Roesler, bky. no. 03-60504.

² § 1002(33) for the most part contain terms that the plan would not be eligible if the church was acting more as a business and not a religious enterprise. For § 410(d) of title 26 to apply, a church must make an affirmative choice not to be treated as a church. No such election has been made because the pensions are covered by § 403(b)(9) of the IRC.

In the instant case, the summary description plan does not include the anti-alienation language. Even if it did, it would not be enforceable under ERISA. There are no substantive rights that a beneficiary or participant can enforce. Therefore the pension should not be excluded from the bankruptcy estate.

III. Does any other enforceable, non-bankruptcy law, relative to the ELCA Pension Plan exist?

A retirement account may be validly excluded from the bankruptcy estate if it contains an anti-alienation provision that is enforceable under other applicable non-bankruptcy law, that is state spendthrift law. Kellogg, 179 B.R. at 388. Generally, the spendthrift trust provides the fund for the maintenance of its beneficiaries and secures the fund from the beneficiaries and their creditors through an anti-alienation provision. Kellogg 179 B.R. at 388. Where a beneficiary exercises control over a retirement plan, as in having the right to direct the investment of funds or the ability to withdraw his contribution under hardship circumstances, the plan will no longer qualify as a spendthrift trust, and any interest held by the debtors will become property of the bankruptcy estate. Kellogg 179 B.R. at 388 citing In re Martin, 119 B. R. 297, 300 (Bankr.M.D.Fla.1990). In Kellogg, the debtor had the power not only to make withdrawals from the plan, but also to terminate the plan, and receive the proceeds of the account, subject only to a penalty. The court determined it would violate public policy to allow the debtor to control and enjoy the benefits of the trust and not pay his creditors. The court did not find the SEP plan to be a valid spendthrift trust, and therefore, the asset was property of the estate.

In the instant case withdrawals are allowed in the following circumstances: (1) after the pension-holder reaches the age of 59½; (2) in the case of hardship; and (3) in the case of disability. See Exhibit “A”, p. 13. More specifically hardships include the following: (1) uninsured medical expenses; (2) costs directly related to a residence; (3) payments of tuition and related educational fees; (4) payments to prevent eviction from the principal residence or foreclosure; and (5) loss to real or personal property caused by a natural disaster. See Exhibit “A”, p. 16.

The Court in In re Swanson, addressed the question of whether a pension, containing anti-alienation language could be considered a spendthrift trust under Minnesota law. According to Swanson, “The Minnesota Supreme Court notes that ‘no particular form of words is necessary to create a spendthrift trust.’” In re Swanson, 873, F.2d 1121, 1123 (8th Cir.1989); In re Moulton’s Estate, 46 N.W.2d 667, 670 (1951). In determining the trust not to be a valid spendthrift trust, under Minnesota law, the court focused on the debtor’s ability to exercise dominion and control over the funds. In Swanson, the court found the fund not to be a valid spendthrift trust and to be an asset of the bankruptcy estate based on a number of factors, including the debtor’s ability to withdraw funds.

The Swanson decision has been criticized by the Massachusetts court in the case of the In re Silvera 186 B.R. 168 (Bankr.D.Mass.1995). In that case, the court stated that the decision in Shumate

unequivocally rejected the underpinnings of Swanson and its progeny, namely that Congress intended to limit section 541(c)(2) to pension plans that qualify under state law as a spendthrift trust. In re Silvera 186 B.R. at 168. The court in Silvera said that the focus on the element of control and access to the retirement of funds, which featured prominently in the analysis of the court in Swanson is no longer determinative in situations where the applicable non-bankruptcy law is law other than state spendthrift law. In the instant case, there is no other law other than state spendthrift law. Accordingly, unless the assets are within a valid state spendthrift trusts, they must be included in the estate. Silvera dealt with a public employees mandatory retirement fund. In that case, the debtor asked the court to infer that an anti-alienation provision contained in the state statute making his pension plan ERISA qualified in support of his claim that his pension benefits are excluded from the estate.

In the instant case, there is no other enforceable non-bankruptcy law to rely on other than the state spendthrift trust. Accordingly, even the decision of Silvera and its reasoning would not apply to the facts in this case, where there is no other non-bankruptcy law available to rely on other than the state spendthrift laws. And, for the same reasoning used in Swanson, the ELCA pension plan fails to qualify as a valid state spendthrift trust because of the control the debtor has over the assets.

In the case at hand the debtor has the ability to make withdrawals for various reasons (albeit with certain tax consequences), and he can direct the investment strategy, all of which is inconsistent with the concept of a spendthrift trust under Minnesota law. Specifically within the ELCA pension plan the debtor may withdraw funds due to immediate and heavy financial need. These needs can arise from: (1) uninsured medical expenses; (2) costs directly related to a residence; (3) payments of tuition and related educational fees; (4) payments to prevent eviction from the principal residence or foreclosure; and (5) loss to real or personal property caused by a natural disaster. See Exhibit “A”, p. 16. The Trustee needs additional information to determine if the debtor’s present circumstances warrant any of the hardship factors to be triggered. The ELCA Summary Plan Description provides that, the employee has “limited in-service withdrawal options, and additional withdrawal and rollover options...” See Exhibit “A”, p. 13. Therefore, state spendthrift non-bankruptcy law does not apply to exclude the debtor’s ELCA Pension Plan as property of the estate.

CONCLUSION

The debtor’s ELCA Pension Plan is property of the estate. 11 U.S.C. §541 and Patterson v. Shumate establish that the ELCA pension is property of the estate because the church plan is not ERISA qualified and there is no other non-bankruptcy law that would permit the property from being excluded from the bankruptcy estate.

Respectfully submitted:

ULVIN AND SULLIVAN ATTORNEYS, P.A.

Dated: September 13, 2004

By /e/ Patti J. Sullivan
Patti J. Sullivan
Trustee in Bankruptcy
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St. Paul, MN 55116
(651) 699-4825

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Donald Ray Clifford,

Debtor.

Case No.: 04-33909

Chapter 13 Case

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Joeline A. Kissinger, employed by attorneys for Michael Farrell, Chapter 13 Trustee, declare that on September 14, 2004, I served Notice of Hearing and Motion Objecting to Exceptions, Memorandum of Facts and Law and proposed Order on the individuals listed below, in the manner described:

By first class U.S. mail, postage prepaid:

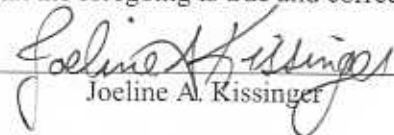
United States Trustee
1015 United States Courthouse
300 South 4th Street
Minneapolis, MN 55415

Curtis K. Walker
4356 Nicollet Avenue South
Minneapolis, MN 55409

Donald Ray Clifford
PO Box 27
Hanley Falls, MN 56245

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 14, 2004


Joeline A. Kissinger

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Donald Ray Clifford,

Debtor.

Case No.: 04-33909

Chapter 13 Case

ORDER OBJECTING TO EXEMPT PROPERTY

At St. Paul, MN, October 20, 2004.

The above-entitled matter came before the undersigned United States Bankruptcy Judge on the motion of Michael Farrell, Chapter 13 Trustee (the "Trustee") objecting to exempt property.

Appearances, if any, were noted in the minutes.

Upon the foregoing motion, arguments of counsel, and upon findings of fact and conclusions of law, if any, read into the record,

IT IS ORDERED: The Trustee's Objection is Sustained and:

1. The debtor's ELCA pension plan valued at \$150,000.00 is not excluded from the estate under 11 U.S.C. §541(c)(2) and is not exempt under 11 U.S.C. §541(c)(2).

Dated this ____ day of _____, 2004

Dennis D. O'Brien
United States Bankruptcy Judge